

BOARD OF ZONING APPEALS

Minutes

August 26, 2003

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m. on August 26, 2003, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

JAMES RUANE, ERMA MARKHAM, RANDY PHILLIPS, JOHN ROGERS,
JAMES SKELTON. BICKLEY FOSTER in at 1:36 p.m.

SHARON DICKGRAFE -- Law Department present.

HERB SHANER and J.R. COX -- Office of Central Inspection present.

The following Planning Department staff members were present:

DALE MILLER, Secretary.

SCOTT KNEBEL Assistant Secretary.

ROSE SIMMERING, Recording Secretary.

RUANE: Item #1, May 27, 2003 BZA meeting minutes.

MARKHAM moves, ROGERS seconds to approve May 27, 2003 BZA meeting minutes.

Motion Carries 5-0.

RUANE: Item #2 BZA2003-39 variance request to allow a building sign on a wall that faces a parking area less than 150 feet in depth for property zoned "LC" Limited Commercial. Applicant is Salah Jamaledine, agent Greg Ferris, location south of Central and east of Winterset.

KNEBEL, Planning staff: Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

SECRETARY'S REPORT

CASE NUMBER: BZA2003-00039

OWNER/APPLICANT: Salah Jamaledine (Owner); Ferris Consulting c/o Greg Ferris (Agent)

REQUEST: Variance to Section 24.04.195.2 of the Sign Code to permit a sign not having street frontage or fronting 150 feet of parking lot.

CURRENT ZONING: "LC" Limited Commercial

SITE SIZE: 0.76 Acres

LOCATION: South of Central and east of Winterset

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is requesting a variance to Section 24.04.195.2 of the Sign Code to permit a sign not having street frontage or fronting 150 feet of parking lot. The subject property is located south of Central and east of Winterset at 606 N. Winterset. The subject property is zoned "LC" Limited Commercial and is currently developed with the Mama Deaux restaurant.

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The applicant has an existing building sign (70 square feet) located on the northeast facade of his restaurant. The façade faces the Wichita-Valley Center Flood Control structure (the Big Ditch) and Central Avenue. The property abuts a utility easement and both the “Big Ditch” and Big Slough drainage ways, and the applicant does not own enough land to put in 150 feet of parking in front of the façade on which the sign is located. The property is a small narrow tract that doesn’t allow for many development options.

The applicant has submitted an extensive justification statement (attached) for the requested variance to permit the sign. Essentially, the applicant states that due to site restrictions (the site’s small size and off site constraints such as the utility easement and drainage easements), the applicant cannot comply with code requirements. The site does not have Central Avenue frontage; however, the applicant indicates a sign in this particular location is necessary to provide visibility for Central traffic. Also, the sign does not face residential uses as the adjacent residentially-zoned property to the east is restricted to a floodway reserve and a parking area for the restaurant by a Community Unit Plan.

ADJACENT ZONING AND LAND USE:

NORTH	“LC”	Office, retail
SOUTH	“MF-18”	Vacant
EAST	“TF-3”	Vacant, drainage way
WEST	“LC”	YMCA and shopping center

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is a small tract without arterial street frontage that is located next to a major drainage way that has developed with a restaurant. As many retail uses do, restaurants depend upon visibility for success. The remote location relative to Central and the drainage way and utility easement and floodway reserve located to the east of the site all combine to make this site unique and unable to develop in conformance with code requirements.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as all adjacent properties are developed with institutional or commercial uses or are vacant. Most adjacent properties will not be able to see the sign. The only adjacent property from which the sign will be visible is restricted in use to a floodway reserve or parking area for the restaurant by a Community Unit Plan.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant; inasmuch as the lack of visibility of the property was created in part by the way the tract was configured by the original developer and by the existence of the drainage facility.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the signage is tasteful in design, is of an appropriate scale, and has minimal lighting.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for the sign to provide visibility from Central will provide a reasonable balance with the visual qualities of the community.

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RECOMMENDATION: It is staff's opinion that the signage requested is appropriate for the intended purpose of identifying the restaurant from Central. Should the Board determine that the five conditions necessary for the granting of the variance exists, then it is the recommendation of the Secretary that the variances be GRANTED, subject to the following conditions:

1. The sign on the subject property shall comply with all regulations of the Sign Code, except that one sign shall be permitted without the 150 feet of parking lot or arterial street frontage on the east building facade.
2. The sign shall be in general conformance with the elevation drawings and site plan approved by the Board.
3. The applicant shall obtain all permits necessary to construct the signage, and the signage shall be erected within one year of the granting of the variance, unless such time period is extended by the Board.
4. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

FERRIS CONSULTING, GREG FERRIS, P O Box 573, Wichita, KS 67201: We concur with staff comments and recommendations.

PHILLIPS MOVES ROGERS SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN BZA RESOLUTION NO. BZA2003-00039.

Motion carries 6-0, and the Board adopts the following resolution:

BZA RESOLUTION NO. 2003-00039

WHEREAS, Salah Jamaledine, (owner/applicant); Ferris Consulting, c/o Greg Ferris (agent) pursuant to Section 2.12.590.B, Code of the City of Wichita, request a variance to 24.04.195.2 of the Sign Code to permit a sign not having street frontage or fronting 150 feet of parking lot on property zoned "LC" Limited Commercial and legally described as follows:

Lot 1, Winterset Place Addition, Wichita, Sedgwick County, Kansas. Generally located south of Central and east of Winterset.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of August 26, 2003, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the property is a small tract without arterial street frontage that is located next to a major drainage way that has developed with

a restaurant. As many retail uses do, restaurants depend upon visibility for success. The remote location relative to Central and the drainage way and utility easement and floodway reserve located to the east of the site all combine to make this site unique and unable to develop in conformance with code requirements.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as all adjacent properties are developed with institutional or commercial uses or are vacant. Most adjacent properties will not be able to see the sign. The only adjacent property from which the sign will be visible is restricted in use to a floodway reserve or parking area for the restaurant by a Community Unit Plan.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant; inasmuch as the lack of visibility of the property was created in part by the way the tract was configured by the original developer and by the existence of the drainage facility.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as the signage is tasteful in design, is of an appropriate scale, and has minimal lighting.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for the sign to provide visibility from Central will provide a reasonable balance with the visual qualities of the community.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance to 24.04.195.2 of the Sign Code be granted to permit a sign not having street frontage or fronting 150 feet of parking lot on property zoned "LC" Limited Commercial and legally described as follows:

Lot 1, Winterset Place Addition, Wichita, Sedgwick County, Kansas. Generally located south of Central and east of Winterset.

The variance is hereby GRANTED, subject to the following conditions:

1. The signs on the subject property shall comply with all regulations of the Sign Code, except that one sign shall be permitted without the 150 feet of parking lot or arterial street frontage on the east building facade.

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2. The sign shall be in general conformance with the elevation drawings and site plan approved by the Board.
3. The applicant shall obtain all permits necessary to construct the signage, and the signage shall be erected within one year of the granting of the variance, unless such time period is extended by the Board.
4. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 26th DAY of AUGUST 2003.

RUANE: Item #3 BZA2003-40 variance requests for a ground-mounted sign to increase the height from 25 feet to 42 feet, to eliminate the requirement that a corner sign be angled to face both streets, and to exempt sign from the requirement that both faces of the sign be no more than 3 feet apart on property zoned “GC” General Commercial. Applicant is Conway Bank, agent Greg Ferris, location at the southeast corner of Kellogg and Main.

KNEBEL, Planning staff: Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

SECRETARY’S REPORT

CASE NUMBER: BZA2003-00040

OWNER/APPLICANT: Conway Bank c/o Chris Anderson (Owner/Applicant), Ferris Consulting c/o Greg Ferris (Agent)

REQUEST:

1. Variance to Section 24.04.221.3 of the Sign Code to increase the maximum permitted height of a pole sign from 25 feet to 42 feet;
2. Variance to Section 24.04.221(m) of the Sign Code to increase the maximum three foot distance allowed between the two faces of a sign that triggers the requirement to count both sides of the same sign as two signs instead of a single sign; and
3. Variance to Section 24.04.221.1 to allow a corner sign to face a single street frontage instead of being angled to face both street frontages.

CURRENT ZONING: “GC” General Commercial and “B” Multi-family Residential

SITE SIZE: 1.20 acres

LOCATION: Southeast corner of Kellogg and Main

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The application area is located southeast of the intersection of Main and Kellogg at 121 E. Kellogg, and is currently developed with a branch office of the Conway Bank. At this location, Kellogg is an elevated freeway segment that is approximately 27 feet in height to the top of the retaining rail. The subject property is zoned “GC” General Commercial and “B” Multi-family Residential.

The applicant proposes to locate a 229.86 square foot, “V” shaped, 42-foot tall pole sign 35 feet east and 20 feet south of the northwest corner of the property. The proposed sign is proposed to contain an LED reader board located just below the main sign face of the sign (see attached site plan and drawings). In order to install the desired design for the pole sign, the applicant is seeking approval of three variances to the Sign Code as follows: (1) variance to Section 24.04.221.3 to increase the maximum permitted

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height of a pole sign from 25 feet to 42 feet; (2) variance to Section 24.04.220(m) to increase the maximum three foot distance allowed between the two faces of a “V” shaped sign that triggers the requirement to count both sides of the same sign as two individual signs instead of a single sign; and (3) variance to Section 24.04.221.1. to allow a corner sign located closer than 50 feet of the right-of-way to face a single street frontage instead of being angled to face both street frontages.

The applicant is seeking the 42-foot height in order to allow for the bottom of the LED portion of the sign (at 30 feet) to be located three feet above the 27-foot high retaining rail of the Kellogg overpass. That makes the overall sign approximately 12 feet tall, from the bottom of the LED reader board to the top of the sign (see attached drawing of the sign). The Sign Code permits a sign height of 25 feet at this location.

The sign is proposed to be a “V” shaped design with 7 feet 10 inches separating the two angled sign faces. The “open” end of the “V” shape is to face south (see top view diagram). The sign code permits a three-foot separation between the angled sign faces of this design. If the width is greater than three feet, then the code requires each face of the sign to be treated as separate signs, and both sides count against the total signage allowed. If the applicant were placing signs along each street frontage, the code permits 112.11 square feet of signage for the Kellogg frontage and 268 square feet along Main Street, provided they were appropriately placed along those two street frontages, however, if the sign is to be placed on the corner, then 50% of the allowable square footage along one frontage has to be given up which results in 237 square feet of signage permitted at the location requested, assuming the sign is a corner sign. The applicant is seeking a 230 square foot sign on each sign face, or a total of 460 square feet of signage since the sign faces are proposed to be separated by more than three feet.

The third variance requested deals with a corner sign that does not face the direction of travel of one of the streets (Main Street). Signs located within 50 feet of the intersection of two streets on a corner lot may be placed so that it faces both directions of travel. When this occurs, it shall be considered a sign adjacent to each street, and one-half of the sign area shall be charged against the total permitted sign area of each street frontage. The applicant states he will give up his right to a second pole sign facing Main Street in return for this variance.

Cambridge Suites Hotel is located west of the application area, and has a 105 square foot sign that was granted a height variance from 25 feet to 35 feet (see attached simulated photograph). An existing off-site billboard sign is located 160 feet east of the proposed sign location.

The applicant has submitted an extensive justification statements (attached) for the requested variances. The applicant’s justification for the variances requested is that the variances are needed for the sign to be visible prior to the freeway exits serving the subject property, which are located more than 1,000 feet prior to the subject property.

ADJACENT ZONING AND LAND USE:

NORTH	“CBD”	Retail
SOUTH	“LC”	Residence
EAST	“GC”	Vacant, billboard
WEST	“LC”	Vacant, motel

The following findings apply to the variances that planning staff recommends be granted. The variances that planning staff recommends to be granted are different than the variances requested by the applicant.

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Therefore, findings different than those contained in the Secretary's Report will be needed if the Board is to grant the applicant's requested variances.

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is located adjacent to an elevated segment of a freeway overpass and signage of the height permitted by the Sign Code would not sufficiently relay the location of the business on the subject property to the traveling public.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variances will not adversely affect the rights of adjacent property owners, inasmuch as all adjacent properties are zoned for commercial uses and the conditions of the variances will ensure that signage on the subject property is of a similar scale as permitted for adjoining businesses.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as the lack of visibility of the property was created by the construction of the freeway overpass that blocks the view of the applicant's property.

PUBLIC INTEREST: It is the opinion of staff that the variances would not adversely affect the public interest, inasmuch as the conditions of the variances will ensure that signage on the subject property is tasteful in design, is of an appropriate scale, and has minimal lighting.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variances would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for an increase in sign height and to angle to the sign towards the direction of traffic to provide visibility from the freeway will provide a reasonable balance with the visual qualities of the community.

RECOMMENDATION: It is staff's opinion that the signage requested is excessive for the purpose of relaying the location of the bank from the freeway, especially in comparison to other on-site signage in the area. It is staff's opinion that the applicant's intended purpose of the sign is to provide general advertising for the applicant's business rather than for relaying the location of the branch bank on the subject property, hence the similarities between the applicant's requested sign design and that of off-site signs or billboards. It is not the intent of the Sign Code to provide visibility of signs for businesses along freeways prior to exits. Given the distance businesses along freeways are located from an exit, it is often impossible to provide visibility of a sign from an exit while still preserving visual qualities of the community. It is the opinion of planning staff that permitting a sign on the subject property that is visible from the freeway exits will detract from the visual qualities of the community. It is the opinion of planning staff that the size and height of sign requested is excessive and that the location of the business can be relayed to travelers along Kellogg with a shorter and smaller sign than requested. Therefore, planning staff recommends that a variance be granted to permit an increase in the height of the sign from 25 feet to 35 feet, rather than the 42 feet requested by the applicant. Such a variance is consistent with the sign height variance granted for the hotel property located west of the subject property. Since the intent of the sign in question is to relay the location of the business on the subject property to traveler's along Kellogg, planning staff recommends that the variance for the 7-foot 10-inch separation between sign faces be granted. Since the variances to increase the height of the sign and to angle the sign faces towards traffic along Kellogg are needed only provide visibility of the sign from Kellogg, planning staff recommends that the requested variance to allow a corner sign face only

Kellogg rather than being angled to face both Kellogg and Main be denied and that the size of the sign be limited to the size permitted by the subject property's frontage along Kellogg. It is the opinion of planning staff that permitting such a variance would circumvent the intent of the Sign Code pertaining to corner signs. Staff's recommendations are intended to ensure that signage on the subject property meets the intent of the sign code to balance the visual qualities of the community with the need for identification of the business on the property. Should the Board determine that the five conditions necessary for the granting of the variances exist, then it is the recommendation of the Secretary that the following variances be GRANTED, subject to the following conditions:

1. A pole sign along the Kellogg frontage of the subject property shall be permitted that complies with all regulations of the Sign Code, except that variances are granted to permit the sign to be a maximum of 35 feet in height and to permit the separation of the sign faces up to a maximum of 7-feet 10-inches on the southern edge of the sign while allowing the square footage of the double-faced sign to be counted as a single sign face for the purpose of calculating the size of sign permitted.
2. The pole sign permitted by the variances shall be limited in area to the size permitted by the subject property's Kellogg frontage.
3. A corner sign shall not be permitted on the subject property unless it is angled to face both Kellogg and Main, per the corner sign requirements of the Sign Code.
4. Prior to the issuance of a sign permit, the applicant shall submit illustrations and a site plan showing the sign permitted by the variances for review and approval by the MAPD to ensure the conditions of the variances and the still applicable provisions Sign Code are met.
5. The applicant shall obtain all permits necessary to construct the sign, and the sign shall be erected within one year of the granting of the variances, unless such time period is extended by the Board.
6. The resolution authorizing the variances may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

RUANE: In addition to the advance packet there is a letter from Greg Ferris dated 8-19-03. Scott, is the height of the highway much different from the location of the Cambridge sign and this sign?

KNEBEL: No, not significantly, not what I can see from being out there. You can kind of see a slope here coming down, and the applicant's sign would be down in this corner, and you can kind of see a slope coming down from that sign to here. The Kellogg freeway itself, I don't believe, is of significant elevation difference along there.

RUANE: So the elevated highway follows the contour of the ground?

KNEBEL: I don't know.

MARKHAM: Is this elevation referenced to the building of Cambridge was this the building up of the ground in that area the reason that we have the different elevation because they have been renovating and rebuilding? Or was it, the elevation was elevated because of the roadway?

KNEBEL: I don't know the specific reason that you have a 12 foot elevation change between these two properties. I assume that it was a man made elevation change.

FOSTER: What is the elevation of the highway compared to the proposed 42 foot sign?

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KNEBEL: The highway railing is 27 feet above ground level at this applicant's property.

FOSTER: This would be 15 feet higher?

KNEBEL: Yes, the sign would be 15 feet higher than the highway railing.

FOSTER: We have had this problem before even though people can see a sign the question is how long can they see it.

FERRIS: We concur with the findings of the staff on the separation of the two faces. However in discussion that you have had with the Cambridge sign, we know for a fact that the ground is higher as a result of the ramping. That sign is actually right up against where the ground elevation is ramping up so that is the reason that is higher. The elevation of the highway would be consistent, so if our ground is lower and the elevation of the highway is the same, that means the Cambridge sign will extend higher above the highway than ours will, or from a visual standpoint, our sign will be 7 foot lower than the Cambridge sign, and we think that is fine because we are basing ours on the height of the highway. We don't care what the ground elevation is; however, for consistency if this sign is 35 feet above its ground elevation and that puts it 7 foot higher than our sign, there should be no visual impairment to a 40 foot tall sign. The top of our sign will be 15 feet higher but the bottom of our sign will just be slightly higher than the railing, so we believe that based on what the variance given for Cambridge and what you have done for many other signs, that to grant a sign variance that would allow the bottom of our sign to be higher than the top of the rail would not be inconsistent with anything that this Board has done nor would it violate the spirit of the Sign Code.

While we concur with the staff findings that demonstrate the five points we believe that the other unique factor here that should be taken into consideration is the variance that was granted for a sign that is going to be 7 foot taller than the sign that we are requesting.

The third variance is important to us. We are not asking for a variance in size. We are allowed a 239 square foot size sign on that corner. But as you can see from the aerial that you have the highway with very large barriers of concrete that make it impossible for anyone southbound on Main Street to see any sign. The City has planted some very nice evergreens and they make a nice landscape buffer, but they also would hide the building and the sign. We are giving up the ability to put another sign on Main Street, because that is one of the requirements when you go to a corner sign and you use that square footage, so we are giving up that sign. We are not asking for a size variance. We are asking for a variance to angle that sign, because the sign will not be able to be seen. The hardship is that you can't see a sign from Main Street. There is no northbound traffic on Main in this area, so facing it northbound on Main would be unnecessary and really not worth the expense. We did not create the one-way street, so we believe that because it is on a one-way street, because the barrier of Kellogg, that this property is unique and we believe it meets that test.

I think the idea of the Sign Code is to limit the size of signs wherever possible and also to reduce the amount of signage. By approving this variance, you are eliminating one sign. We are not making the sign any larger than we are allowed.

We would ask a modification based on the elevations, and we are asking for a variance whether or not we have to angle it to a street, because of the Kellogg overpass and because of the one way street systems of Wichita, the sign would be invisible.

RUANE: Aren't you adding together the sign rights of Kellogg and Main?

FERRIS: If we were to angle that sign we would be able to put up a 239 square foot sign, so we are asking for a variance of the requirement to angle that sign.

FOSTER: On the drawing from Miracle Signs, which shows the full height of the sign, what is the 3 foot 8 inch area used for?

FERRIS: That is the LED reader board, which is calculated in our square footage.

FOSTER: So we are really talking about almost 4 feet of this is to have a reader board above the height of the railing.

FERRIS: Which is part of the sign, exactly.

RUANE: On the topic of Uniqueness on the north side of Kellogg is the Gateway to Wichita structure and public art improvements, do you think this sign has any impact on that improvement visually or aesthetically?

FERRIS: I don't think it would, because it is on the opposite of the highway quite a bit and a number of linear footage separates that two. One of the complaints about that is that it is invisible from the highway so you have that nice public art nobody can see. The people that see that are people that are going northbound on Main Street, and anybody going northbound on Main would have their back to anything that we are doing. The only two viewing areas of which you can see this sign are westbound on the frontage road or northbound on Main Street, and either one of those traffic movements would not be able to see our sign.

RUANE: I am struggling with this one on the height issue. The sign height up and down Kellogg and around the K-96 freeway keep coming to this Board over and over and we need to be consistent. For a hotel I can understand they have one shot to catch the drivers eye and get them to pull over; whereas, a bank would be a designation stop.

FOSTER: I would like to direct attention to the reader board because we haven't had a sign on Kellogg for a while. Scott, have we actually elevated signs so reader boards can be seen from the highway?

KNEBEL: I don't recall.

PHILLIPS: As far as the elevated portions no. The only one we have had like this was the Friends University sign.

FOSTER: I question the need to go any higher because of the reader board. I think just by going higher to clear the railing and all that, but I don't agree with the 42 feet, and I am not sure that it is exactly 35. It takes 35 1/2 feet to actually include what they have designed so 35 is actually less than what you see there.

RUANE: Bickley, how do you feel about an LED changing sign so close to the highway?

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FOSTER: I don't see that is the purpose to having all the extra signs on the highway. I think it is to find a location and that is what this does. I don't know that we have to have other materials on signs like LED readers.

SKELTON: Bickley, you would be in favor of a sign clearing Kellogg and not a LED reader board?

FOSTER: Right, if we did that, it would be 27 feet plus 8.6 is 35.6 feet, so I would say 36 or 37 feet ought to do it without having to include the reader board. There may be an elevation question here so I could see maybe 36 feet would be fair.

SKELTON: What is the basis for your objection on the reader board?

FOSTER: People are going 60 mph and how much can you read going that fast? I am not sure that it is a good idea to elevate signs to have reader boards along a freeway.

PHILLIPS: This is probably the third request that I have heard in this area: The Spangles sign and the original Cambridge sign. The issues that did come up regarding the Cambridge Suites were that they were trying to catch people long before they got to the off ramp. The current height that exists now was arrived at not based on height of sign but, vertical elevation as relationship to adjacent structure and adjacent signs, and we have done that in several locations.

The Wichita Inn sign in front of Wal Mart which has now been pulled down, we looked at the average sign heights in the area. Much of the way where you have variance request for setbacks sometime the Central Business District or some of the downtown areas, if you are required to be inside that setback but you have adjacent structures that encroach on it you are allowed to take those as an average. That is how we arrived at the Cambridge Suite sign because of the fact they were requesting I believe 45 or 50 tall sign. It was taller than it is now, and it wasn't the height above the ground. It was the height above the railing there, so what happened there, we went through a process and the applicant revised the request and put it a little back and reduced the height. If you go on a strict interpretation and look at the height above the base of the sign you have different basis points, and that is how we arrived at that. We did not really look at how tall the sign was. It was what was it in relationship of the height of the elevation in relationship to the rest of the structures.

At that time, we didn't have the tower that is now the LaQuinta. We didn't have a billboard sign there, and we didn't have the addition to the Cambridge Suites. From my standpoint I am looking at the consistency, and my only concern with the reader board is the fact that we try and control it with frequency of the message. I am in favor of less signs.

RUANE: Randy, based on the height and consistency with the Cambridge sign, you are in favor of the variances?

PHILLIPS: This is less than the Cambridge sign. Had they come in here asking for something that would have put the elevation of the sign above it, I probably wouldn't support that, but what is it in relationship to the railing, the adjacent signs? I think the requests are within reason with the exception of the frequency with the reader board and have it not flashing and distracting traffic.

RUANE: What is the setback from Kellogg for the Friends University sign?

PHILLIPS: It is roughly the same as this sign.

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RUANE: I need to see the slide with the billboard. Is that at the eastern edge of the Conway Bank property?

KNEBEL: Approximately.

PHILLIPS: I would like to hear if we have some control or some assurance that the frequency of the reader board can be controlled. I think the Westlink sign turned out well.

DICKGRAFE: I think there is a distinction between this sign and the Westlink sign. Westlink had to get a variance for a reader board, where in this particular location the reader board would be granted as a right or allowed.

FERRIS: We don't have a problem with frequency, and we had not considered this, and if you have a direction and suggestion, we will be accommodating.

PHILLIPS: We would have to defer to staff on that, because it was something that was agreed to in the meeting. It was a matter of seconds not minutes. It was minimum frequency was a matter of seconds.

KNEBEL: I recall that it was every 10 seconds that the message could change.

FERRIS: We would not have a problem with 10, 12, 13, second periods. We would concur with that as long as it was in that range.

MARKHAM: This 42 foot height, this will put the reader board clearly above the rail?

FERRIS: Yes, that is correct. Part of that is a safety issue, but the idea is that the standard for signs are really safety issues. The size of the sign, the readability, so people are not trying to read it but so that it will catch their view and attention.

TAPE CHANGE

FERRIS: I think we could live with 39 feet.

SKELTON: At 39 feet that would put the reader board just a few inches below the rail.

FERRIS: Actually it would put it at grade at the top rail.

FOSTER: We don't have a long history of these reader boards?

PHILLIPS: We have had several requests from churches and Friends University.

FOSTER: These churches are not on Kellogg where people are driving 60 mph.

SKELTON: What about the marquee on top of the SC Telecom building? People turn their heads to look at that.

FOSTER: It is not a reader board.

SKELTON: It is the same type of thing to where you have to turn your head to look at the information coming across it. That is my opinion. I agree with Mr. Phillips and his sentiments about consistency here.

FOSTER: We don't have any consistent rule about allowing the reader board just because they are on the freeway area.

PHILLIPS: Are you looking for consistency or precedence?

FOSTER: It is my opinion. I don't think on a high-speed road like this that we need to encourage the visibility of reader boards to that extent. I agree with the Chairman that it is a bank, and it is not a place to stop overnight like the prior sign would imply.

PHILLIPS: Neither was Friends University, and that was a destination place as well. They came in applying for the same thing increasing the height, the size, as well as the reader board.

RUANE: We need to reach a consensus here and as efficiently as possible. The very purpose for a variance such as requested here is to address inconsistency and come up with a unique solution to a unique situation that satisfies the five criteria by which we would approve of the variance. What I think is a solution is a 35 foot maximum height because that is adequate to communicate and relay the location of the bank for its customers and potential customers. With regard to the request to the angling of the sign and the 7 foot 10 inch separation of sign faces I believe that those two should be allowed for the reasons that have been well expressed by the applicant.

RUANE moves to approve a variance with some of the information provided in the Secretary's report. I move that the Board accept some findings of fact as set forth in the Secretary's report that all five conditions....

DICKGRAFE: You will need to specify in your motion which facts you are basing the motion on.

RUANE: Thank you, let me split this up this way. With regard to the variance sought to eliminate the requirement that a corner sign be angled to face both street and to exempt the sign from the requirement that both faces of the sign be no more than 3 feet apart on property zoned "GC" General Commercial I hereby make a motion to approve a variance with the information provided in the Secretary's report.

FOSTER: Is that part of your motion?

RUANE: I was going to split it up and do one motion to accept two out of three.

FOSTER: How do we do conditions then? The findings that relate to the whole thing in the Secretary's Report, not each variance request separately.

DICKGRAFE: You can either do this as one motion for all three and then indicate what change you are wanting to make involving the height. You can move that the variance be granted for the first two and that it be granted up to 35 feet and then adopt the findings in the Secretary Report, which I think are consistent with the motion that you are trying to make, which is that you are going to grant all three variances however the third variance is limited to height of 35 feet rather than the 42 feet requested by the applicant.

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FOSTER: Where is rationale covered by the staff for that?

RUANE: I hereby make a motion to approve a variance with information provided in the Secretary's Report. I move that the Board accept that the findings of fact as set forth in the Secretary's Report and that all five conditions set out in Section 2.12.590(b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the condition that contrary to what staff recommends the maximum sign height be 35 feet.

DICKGRAFE: That is actually what staff recommended.

PHILLIPS: Are you going with the applicant's revised request?

DICKGRAFE: The staff recommendation is 35 feet? The application was for 42 feet. Staff also recommended essentially that the two signs the square footage of the sign be denied when you added them together.

KNEBEL: Actually, that the sign square footage be limited to that permitted by linear footage to Kellogg.

RUANE: I am going to back off and let Mr. Ferris have one more minute.

FERRIS: The staff has recommended 35 feet, and you certainly can concur with them on the two and on the one which you are differentiating, I believe and correct me if I am wrong Sharon, you can find that you agree with my findings, which you can find which I believe go through the five unique features, and I think that is the requirement of the Board is to find that there is concurrence with some set of findings, and so that we can disagree with the staff's findings on that by concurring with my findings, which I believe should meet the test. That would be a way that you could craft it into that motion.

MARKHAM: Is that your findings relative to the angling of the sign?

FERRIS: Yes.

FOSTER: Mr. Ferris, is your timing critical at this point? Would staff have time to rewrite this along the idea of how the Board might decide this? I would hope that there would be an agreement as to heights and all the other features, but I think there does need to be some relationship to the findings. They are rather complicated.

FERRIS: I think that the findings that staff has presented, if I understood the motion that was going to be made, were in line with that, and I think Sharon looked at mine. Sharon is there a problem with the statements that I made in relationship to the angling of the sign?

DICKGRAFE: I think you still have the problem that the variance was for 42 feet.

FERRIS: I understand, but there were 3 separate variances. I had separate findings on the angling of the sign.

DICKGRAFE: I think that if the Board wants to make or grant the variance, two out of the three, they can do that at this point. I think the Board can, and I am not getting a good feel as to whether we are at 35 or 39 from the Board, and I guess the other consideration would be under the By-Laws if you don't get four votes it fails, so whether the applicant wants to go back and try to work with staff or whether the staff can live with 38 or 39 or whether staff is set at 35. I am not telling anybody how to do this, but if the Board wants us to come back in a month and direct staff and the applicant to get together they can do that. If they want to grant two out of the three and table the last one they can do that. Frankly, it may not do the applicant much good to get two out of the three.

FERRIS: Why is it that they could not approve all three today?

DICKGRAFE: They could.

FERRIS: They can approve all three but they need to designate findings. Do you have any problem with the findings I have provided just for the angle of the sign, not on the others, because his motion is to concur with staff on the other two isn't that right Mr. Ruane?

RUANE: The height, I don't personally think it needs to be greater than 35 feet.

FERRIS: I don't agree with that. His motion is consistent with staff findings and the only one that is not consistent with staff findings, which is what I understood the struggle was, and that is why I suggested that he adopt my findings for the angle of the sign.

FOSTER: I am not sure I have gotten an answer about timing. Mr. Ferris would this be a problem to the applicant? This is a very complicated thing for the Board to try and make a motion to try and write the findings.

FERRIS: If the Board feels uncomfortable and needs to give directions to the staff to find findings, such that I don't know how they do that, however you direct them to do that.

FOSTER: Mr. Chairman, I would like to see you continue with your motion in terms of the standards that you are referring to and then direct the staff to utilize the information available which is both Mr. Ferris's and the staff to put together a finding that we could look at for the next meeting. I don't see it changing the standards. I see it trying to word the thing so that the findings match what is being decided.

PHILLIPS: I think at looking back at one of the other applications, and it may have even been for the Cambridge Suite sign, we were given information regarding heights of signs, and structure across the road and it gave us a little better idea about the context in which we were looking at. I think it would be helpful, and I think Mr. Ferris has brought some good information in front of us, and I think if staff could put that into their report I think it may make it easier for the Board, and make it easier for the applicant, to make any adjustments they see fit.

RUANE: As long as the applicant doesn't mind the inconvenience of the time he has had to spend today without a decision, I would welcome a motion to table and consider Randy as a second; however, I am not comfortable with making a motion and sending staff off to make findings consistent. I think staff needs to meet with the applicant and can work together on a solution workable for all.

PHILLIPS: My thought on that it is really the responsibility of the applicant to go through that and staff is here to assist them, and I would encourage them to do that, and I think that would be the thing to do.

FOSTER: Mr. Phillips, I thought you started to make a motion, or you didn't make a motion.

RUANE: No, I think he seconded your motion.

PHILLIPS: If your motion is to defer for 30 days I will second that motion.

FOSTER moves MARKHAM seconds to defer for 30 days to have the applicant provide an opportunity for the applicant to discuss with the staff and to make proposed revisions if deemed necessary and return back to the next meeting in September.

MOTION carries 6-0.

RUANE: Item #4 BZA2003-41 variance request to reduce the front building setback from 25' to 14'1" and to permit a parking area within the street side setback for Marshall Middle School on property zoned "TF-3" Two-Family Residential. Applicant is Wichita Public Schools, agent Joe Hoover, location at the northeast corner of 14th Street North and Payne.

KNEBEL, Planning staff: Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

SECRETARY'S REPORT

CASE NUMBER: BZA2003-00041

OWNER/APPLICANT: Wichita Public Schools c/o Joe Hoover

AGENT: n/a

REQUEST: Variances to reduce the front building setback from 25' to 14'1" and to permit a parking area within the street side setback for Marshall Middle School.

CURRENT ZONING: "TF-3" Two-Family Residential

LOCATION: Northeast corner of 14th Street North and Payne (1510 Payne)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The subject property is developed with the Marshall Middle School, is located at the northeast corner of 14th Street North and Payne (1510 Payne), and is zoned "TF-3" Two-Family Residential. The application area encompasses the entire block, and is platted with 25-foot wide lots that front both Salina Street and Payne Street. Because of the way the site is platted, this property has front building setback requirements on both Payne and Salina. Due to a major reconstruction project on the school site, the applicant is requesting two variances. The applicant submitted the attached site plan illustrating the variances requested and the attached narrative description of the need for the variances requested.

The first variance requested is to reduce the front building setback along the east property line, the Salina Street side, from 25' to 14'1". The Unified Zoning Code requires a 25' front building setback in the "TF-3" Two-Family zoning district. By code, the reduction of a front building setback by greater than 20% requires a variance. The zoning regulations also allow "setback averaging" whereby a building can be set back a distance equal to the average front building setback of the five existing structures on either side of the property within the block on the same side of the street. In the case of the subject property, setback averaging would not address the applicant's problem since there are no other buildings on the west side of Salina in this block.

The second variance requested is to permit a parking area with the required 15' street side yard setback for the "TF-3" Two-Family zoning district. The proposed parking area would be setback 6'6" from 14th Street North and would be located south of the school building. The code permits an administrative adjustment to permit parking within the front and street side setback areas for residential zoning districts, but the administrative adjustment cannot permit a parking area to be located any closer than 8' from the property line. The proposed remodeling project will not accommodate an eight-foot setback (see site plan), as the remodeling project will incorporate the existing building into the project. The existing building cannot be moved without additional major expense. There is also a need to preserve the open space to the north of the building for open space and recreational uses.

The application area is surrounded by property developed with residential uses that typically have 25' front setbacks and 6' street side yard setbacks. The 15' street side yard setback is a relatively new zoning code requirement that was not in place when the properties in this neighborhood were developed.

ADJACENT ZONING AND LAND USE:

NORTH	"TF-3"	Church
SOUTH	"TF-3"	Single-family and duplex
EAST	"TF-3"	Single-family and duplex
WEST	"TF-3"	Single-family and duplex

UNIQUENESS: It is the opinion of staff that this property is unique inasmuch as the property is developed with a single nonresidential use, a school, that is sitting on property that is platted with 25-foot wide lots initially intended for multiple individual uses that have front yard setbacks on both Salina and Payne streets. Instead, the site is developed with a building that fronts Payne Street, and is to be developed in a manner that makes the Salina Street side of the building the rear of the building. 14th Street will remain a side street, however, the fact that the redevelopment of the site will incorporate the existing building that prevents the project from being moved northward, and there is a need to preserve the play area to the north of the building.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the addition to the structure would be internal to the subject property. Approval of these requests will retain sufficient building setback to allow for landscaping, fire protection, separation, light and air circulation, and pedestrian access, and will impact nearby properties minimally.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Zoning Code constitutes an unnecessary hardship upon the applicant, due to site constraints (existing plat that has front setbacks on both Payne and Salina), the need to use the existing building as part of the remodel and the need to preserve the open space located to the north of the building. Alternatives to the variances would make the project more costly to redevelop, and make the site less efficient.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way, and therefore there will be no effect on the general public.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variances requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setbacks will continue to provide for fire protection, separation, light and air circulation, and pedestrian access.

RECOMMENDATION: Should the Board determine that conditions necessary grant the variances exist, then it is the recommendation of the Secretary that a variance to reduce the front building setback along the east property line from 25' to 14'1" feet and a variance to permit a parking area within the street side yard setback along the south property line but no closer 6'6" from the property line be **GRANTED**, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the front building setback shall be reduced from 25' to 14'1" along the east property line, and the a parking area shall be permitted within the street side yard setback along the south property line no closer than 6'6" from the property. This setback reduction shall apply only to the improvements shown on the site plan approved by the Board of Zoning Appeals. The addition and parking area shall be constructed in general conformance with said site plan.
2. The applicant shall obtain all local permits necessary to construct the indicated improvements, and all improvements shall be completed within one year following the BZA approval of the variances unless such time period is extended by the BZA.
3. The resolution authorizing these variances may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

USD 259, agent Joe Hoover, 3850 N. Hydraulic, Wichita, KS 67219: I don't have anything else to add but I will be glad to answer questions.

Rosalie Bradley, 1401 Julianne, Wichita, KS 67203, President of the North Riverside Neighborhood Association: As a neighborhood, we are not going to object to the variance if they go ahead with the site plan, and we would like if they have any trash receptacles close to the street that those are screened and that they complete the sidewalks which are on the site plan. There are no sidewalks in the area, so the kids have to walk on the school property, which is grass right now, but if they narrow that down, they won't be able to walk on that, so if there are sidewalks it will tend to place them there. I realize it is not in the variance, but it is one of the things they promised in their site plan.

Kurt Bachman, 5025 Harborside Ct., Wichita, KS 67204: I own two duplexes on Salina, 1512-1520. I am in favor of what they are trying to do. My main concerns are right now that is a narrow street and cars are now parking on both sides of it, and when people come to drop the kids off basically you can't get into my property. My two duplexes share a driveway and they are always queuing up, and granted this is just during school time and usually drop off, and it is okay at 5 p.m. when most people are coming home. I am all for the parking lot. Is the parking lot adequate to alleviate the off-street parking that we have now, and secondly, looking at the design, I can't tell what now is going to be. I am on the east side of the building, so it looks to me like they are bringing the building out closer to the setback but is that going to be a drop off area? Are the teachers going to park in the parking lot but is all the school traffic still going to be on Salina? Is it going to alleviate the problems that I am having on my property?

HOOVER: As far as teacher parking, I think it will help the situation with the buses a lot. What we are required to have at a middle school is spaces for all staff plus 10 visitors. Right now, I am guessing that those teachers, since we don't have nearly enough parking now, the teachers are parking around the perimeter. There are signs there were they can't park for the buses on the east side of Salina. We don't count on the bus drop off changing, but it won't eliminate the congestion problem, but it should greatly improve the problem.

RUANE: Is there going to be a drop off lane?

HOOVER: Not at this time. It is not planned.

BACHMAN: The buses are on the west side. My question is the structure itself. Have they made big doorways and sidewalks that lead off of Salina that would force people off Salina.

HOOVER: I don't believe the main entrance is changing. The entrance on the southeast side will be changed.

RUANE: Trash receptacles being screened?

HOOVER: Yes, it will be screened.

KNEBEL: It is a standard requirement of the Zoning Code.

FOSTER: There will be sidewalks all the way around? Do we have sidewalks on all four sides here?

HOOVER: It is not on the plan except on the south and part of the east.

FOSTER: What is the intention?

HOOVER: Sidewalks just on the south and partial on the east.

RUANE: On the southern perimeter and on the lower third.

HOOVER: All along the south side of the property and extending up from the southeast corner from 14th and Salina up even with the first entrance.

FOSTER: How many students are anticipated for this school?

HOOVER: We are not greatly increasing the enrollment. We are adding infrastructure, plumbing, air conditioning. We are adding a couple of classrooms and adding five science classrooms and a cafeteria. There are about 600 students now.

FOSTER: Don't you think after three decades that sidewalks would be an improvement and desirable?

HOOVER: I agree anytime we have capital improvement money, we try and decide whether we are going to put sidewalks, fix a roof, or heating, or things like that.

FOSTER: Why wouldn't their building permit require them to have sidewalks?

PHILLIPS: Sidewalks are not required as part of the Building Code. The development of the sidewalks within an area is not part of the Code unless it pertains to a specific exiting requirement for the building and anything around the perimeter of that property does not pertain to that.

PHILLIPS MOVES MARKHAM SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN BZA RESOLUTION NO. BZA2003-00041 AND A CONDITION REQUIRING A SIDEWALK ALONG THE SOUTH PROPERTY LINE AND ALONG THE EAST PROPERTY LINE TO FIRST DRIVEWAY NORTH OF 14TH STREET.

Motion carries 6-0, and the Board adopts the following resolution:

BZA RESOLUTION NO. 2003-00041

WHEREAS, Wichita Public Schools c/o Joe Hoover, (owner/applicant) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests variances to reduce the front building setback from 25' to 14'1" and to permit a parking area within the street side setback for Marshall Middle School on property zoned "TF-3" Two-family Residential and legally described as follows:

Even Lots 2 through 48, inclusive, and Odd Lots 1 through 47, inclusive, on Payne Avenue, Garden Grove Addition, Wichita, Sedgwick County, Kansas. Generally located at the northeast corner of 14th Street North and Payne (1510 Payne).

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of August 26, 2003, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique inasmuch as the property is developed with a single nonresidential use, a school, that is sitting on property that is platted with 25-foot wide lots initially intended for multiple individual uses that have front yard setbacks on both Salina and Payne streets. Instead, the site is developed with a building that fronts Payne Street, and is to be developed in a manner that makes the Salina Street side of the building the rear of the building. 14th Street will remain a side street, however, the fact that the redevelopment of the site will incorporate the existing building that prevents the project from being moved northward, and there is a need to preserve the play area to the north of the building.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as the addition to the structure would be internal to the subject property. Approval of

these requests will retain sufficient building setback to allow for landscaping, fire protection, separation, light and air circulation, and pedestrian access, and will impact nearby properties minimally.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the Zoning Code constitutes an unnecessary hardship upon the applicant, due to site constraints (existing plat that has front setbacks on both Payne and Salina), the need to use the existing building as part of the remodel and the need to preserve the open space located to the north of the building. Alternatives to the variances would make the project more costly to redevelop, and make the site less efficient.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way, and therefore there will be no effect on the general public.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variances requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setbacks will continue to provide for fire protection, separation, light and air circulation, and pedestrian access.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that variances to reduce the front building setback along the east property line from 25' to 14'1" and to permit a parking area within the street side setback along the south property line for Marshall Middle School are granted on property zoned "TF-3" Two-family Residential and legally described as follows:

Even Lots 2 through 48, inclusive, and Odd Lots 1 through 47, inclusive, on Payne Avenue, Garden Grove Addition, Wichita, Sedgwick County, Kansas. Generally located at the northeast corner of 14th Street North and Payne (1510 Payne).

The variance are hereby GRANTED, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the front building setback shall be reduced from 25' to 14'1" along the east property line, and the a parking area shall be permitted within the street side yard setback along the south property line no closer than 6'6" from the property. This setback reduction shall apply only to the improvements shown on the site plan approved by the Board of Zoning Appeals. The addition and parking area shall be constructed in general conformance with said site plan.
2. A sidewalk shall be constructed along the entire length of the south property line and along the east property line from the south property line to the first driveway north of the south property line.

3. The applicant shall obtain all local permits necessary to construct the indicated improvements, and all improvements shall be completed within one year following the BZA approval of the variances unless such time period is extended by the BZA.
4. The resolution authorizing these variances may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 26th DAY of AUGUST 2003.

RUANE: Item #5 BZA2003-42 variances for Krispy Kreme to permit two building signs on a wall facing a parking area with a depth of less than 150 feet for property zoned “LC” Limited Commercial. Applicant is Neville Family Trust II, and Krispy Kreme Doughnut Corporation, agent Kelly J. O’Brien, location north of Central and east of Tyler.

KNEBEL, Planning staff: Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

SECRETARY’S REPORT

CASE NUMBER: BZA2003-00042

OWNER/APPLICANT: Krispy Kreme Doughnut Corp. (applicant), Neville Family Trust (owner), Kelly O’Brien (Fairmont Sign Co., agent)

REQUEST: Variance to Section 24.04.195.2 of the Sign Code to permit a sign not having street frontage or fronting 150 feet of parking lot.

CURRENT ZONING: “LC” Limited Commercial

SITE SIZE: .87 Acres

LOCATION: North of Central and east of Tyler (8512 W. Central)

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The applicant is requesting a variance to Section 24.04.195.2 of the Sign Code to permit two signs on the west facade not having street frontage or fronting 150 feet of parking lot. The subject property is located north of Central and east of Tyler at 8512 W. Central, is zoned “LC” Limited Commercial and is currently being developed with a Krispy Kreme doughnut shop.

The applicant proposes to place two signs totaling 28.7 square feet on the west facade of his restaurant – one sign would be 20.4 square feet, the other is 8.3 square feet (see attached “Site Plan” and “Drive-Thru Elevation”). The entire application area is less than 160 feet wide. The structure being constructed on the application area will set within 25 feet or so of the west property line in order to provide for parking and on-site circulation on the east side of the lot. The property to the west is developed with a Fazoli’s restaurant that is 97 feet from the west façade of the Krispy Kreme, and this area contains a drive-thru for Krispy Kreme and Fazoli’s main parking field (see attached site plan). The buildings on either side of the application area have observed the same front building setback as the applicant’s structure.

The applicant has submitted a justification statement (attached) for the requested variance to permit the sign. Essentially, the applicant states that the signage is needed to advise its customers when “hot doughnuts” are available, which is a key marketing strategy for this company, and these signs will also

provide corporate identification for customers traveling along Central. The applicant contends that approval of this signage will not negatively impact adjoining businesses.

ADJACENT ZONING AND LAND USE:

NORTH	“LC”	Vacant
SOUTH	“GO”	Apartments
EAST	“LC”	Restaurant
WEST	“LC”	Restaurant

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is a narrow lot of less than 160 feet or so that is adjacent to another narrow lot that makes it virtually impossible to site a building of any size and maintain 150 feet of parking between the buildings.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch as all adjacent properties are developed with similar commercial uses. These signs are small, and at least one of them is intended to serve the unique marketing needs of this donut brand, and is lit only on an intermittent basis.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant; inasmuch as the timely announcement that their product is ready for sale is critical to the success of their business.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the signage is tasteful in design, is of an appropriate scale, and has minimal lighting.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for the sign to provide visibility from Central will provide a reasonable balance with the visual qualities of the community.

RECOMMENDATION: It is staff's opinion that the signage requested is appropriate for the intended purpose of identifying the restaurant from Central. Should the Board determine that the five conditions necessary for the granting of the variances exist, then it is the recommendation of the Secretary that the variances be GRANTED, subject to the following conditions:

1. The signs on the subject property shall comply with all regulations of the Sign Code, except that two signs shall be permitted without the 150 feet of parking lot or arterial street frontage on the west building facade.
2. The sign shall be in general conformance with the elevation drawings and site plan approved by the Board.
3. The applicant shall obtain all permits necessary to construct the signage, and the signage shall be erected within one year of the granting of the variance, unless such time period is extended by the Board.
4. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

KELLY J. O'BRIEN, FAIRMONT SIGN COMPANY, 3750 E. Outer Drive, Detroit, Michigan:
We concur with the staff recommendation and conditions.

MIKE LARUE, DIRECTOR OF DEVELOPMENT KRISPY KREME, 940 AQUEVIEW, KERNERSVILLE, NC 27284: We also agree with findings and I am here to answer any question.

ROGERS MOVES SKELTON SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN BZA RESOLUTION NO. BZA2003-00042.

Motion carries 6-0, and the Board adopts the following resolution:

BZA RESOLUTION NO. 2003-00042

WHEREAS, Krispy Kreme Doughnut Corporation, (applicant), Neville Family Trust (owner); Kelly O'Brien, Fairmont Sign Company, (agent) pursuant to Section 2.12.590.B, Code of the City of Wichita, request variances to Section 24.04.195.2 of the Sign Code to permit signs not having street frontage or fronting 150 feet of parking lot on property zoned "LC" Limited Commercial and legally described as follows:

Part of Lot 1, Tyler Acres Fifth Addition, Wichita, Kansas, Sedgwick County, Kansas, commencing at a point 365 feet east and 65 feet north of the Southwest corner of the Southwest Quarter of Section 16, Township 27 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said point being the lot corner common to Lots 1 and 3 in said Addition; thence east along the south line of said Lot 1, 620.16 feet for a point of beginning; thence continuing east along the south line of said Lot 1, 133 feet; thence north at right angles 285 feet; thence west at right angles 133 feet; thence south 285 feet to the Point of Beginning. Generally located north of Central and east of Tyler (8512 W. Central).

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of August 26, 2003, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the property is a narrow lot of less than 160 feet or so that is adjacent to another narrow lot that makes it virtually impossible to site a building of any size and maintain 150 feet of parking between the buildings.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested would not adversely affect the rights of adjacent property

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owners, inasmuch as all adjacent properties are developed with similar commercial uses. These signs are small, and at least one of them is intended to serve the unique marketing needs of this donut brand, and is lit only on an intermittent basis.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant; inasmuch as the timely announcement that their product is ready for sale is critical to the success of their business.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as the signage is tasteful in design, is of an appropriate scale, and has minimal lighting.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for the sign to provide visibility from Central will provide a reasonable balance with the visual qualities of the community.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that variances to Section 24.04.195.2 of the Sign Code be granted to permit two signs not having street frontage or fronting 150 feet of parking lot on property zoned "LC" Limited Commercial and legally described as follows:

Part of Lot 1, Tyler Acres Fifth Addition, Wichita, Kansas, Sedgwick County, Kansas, commencing at a point 365 feet east and 65 feet north of the Southwest corner of the Southwest Quarter of Section 16, Township 27 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said point being the lot corner common to Lots 1 and 3 in said Addition; thence east along the south line of said Lot 1, 620.16 feet for a point of beginning; thence continuing east along the south line of said Lot 1, 133 feet; thence north at right angles 285 feet; thence west at right angles 133 feet; thence south 285 feet to the Point of Beginning. Generally located north of Central and east of Tyler (8512 W. Central).

The variances are hereby GRANTED, subject to the following conditions:

1. The signs on the subject property shall comply with all regulations of the Sign Code, except that two signs shall be permitted without the 150 feet of parking lot or arterial street frontage on the west building facade.
2. The signs shall be in general conformance with the elevation drawings and site plan approved by the Board.

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3. The applicant shall obtain all permits necessary to construct the signage, and the signage shall be erected within one year of the granting of the variance, unless such time period is extended by the Board.
4. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 26th DAY of AUGUST 2003.

RUANE: Item #6 BZA2003-44 variance request to permit an addition to Clark Elementary School not intended for storage, warehousing, or low occupancy use on property located within the Airport Overlay District III North. Applicant is USD 259, agent Joe Hoover, location at the southwest corner of Apache and Gouverneur.

PHILLIPS: Mr. Chairman, I need to declare a conflict of interest. My firm is the architect for this project.

KNEBEL, Planning staff: Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

SECRETARY'S REPORT

CASE NUMBER: BZA2003-0004

OWNER/APPLICANT: USD 259, c/o Joe Hoover

REQUEST: Variance to Section III-C.5.f.(4)(d)(3) of the Unified Zoning Code pertaining to the intensity and occupancy of buildings located within the Airport Overlay District

CURRENT ZONING: "SF-5" Single-family Residential

SITE SIZE: 6.07 Acres

LOCATION: Southwest corner of Gouverneur and Apache Drive

JURISDICTION: The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

BACKGROUND: The subject property is located at the intersection of Gouverneur and Apache Drive. The subject property is zoned "SF-5" Single-family Residential, and is currently developed with Clark elementary school. The applicant is requesting a variance to Section III-C.5.f.(4)(d)(3) of the Unified Zoning Code. This section of the code deals with the Airport Overlay District that regulates the type and intensity of uses located on property located within the Airport Overlay District. In general, the purpose of these regulations is to protect both the public, and the mission of the airbase, by establishing maximum concentrations of people located beneath the takeoff and approach paths of the airbase. In this case, the applicant is seeking to expand the size of the existing building. The Code section from which the variance is requested states, "Any use or building may be expanded so long as the total expansion of the use or building or lot area: Is intended as an accessory use for storage, warehousing, or other similar low occupancy use." The applicant proposes to add approximately 6,000 square feet of classroom space in order to improve the school as illustrated on the attached site plan. Since the addition will contain classrooms and will be occupied by students, the addition is not permitted by the Airport Overlay District because the addition is not for storage, warehousing, or other similar low occupancy use. The applicant's attached justification indicates that there are at present no plans to significantly increase the school's enrollment. The applicant anticipates that 15 new students will attend the school when compared to last year's enrollment.

ADJACENT ZONING AND LAND USE:

NORTH	“SF-5”	Single-family Residential Residences
SOUTH	“MF-29”	Multifamily Residential Residences
EAST	“MF-29”	Multifamily Residential Residences
WEST	“SF-5”	Single-family Residential Residences

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is developed with an elementary school that is subject to the Airport Overlay District. The subject property is the only school property located with the Airport Overlay District.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as this site has been an elementary school for many years, the size of the addition is small in comparison to the existing school and the overall school site, and the addition is to be setback 80 feet at the closest point from the property line.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the Airport Overlay District will constitute an unnecessary hardship upon the applicant, inasmuch as the addition is being made to enhance the educational experience of the school’s students. Student population could increase whether the addition is completed or not.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the school already exists, the addition is small when compared to the existing improvements, the addition is being constructed to improve the quality of facilities and educational experience of the existing student body and the proposed addition meets all the other requirements of the Airport Overlay District.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Airport Overlay District inasmuch as the addition will not significantly contribute a concentration of large numbers of persons under the runway takeoff and approach paths. The concentration of persons at the school is a pre-existing condition that will not change significantly by the granting of the variance.

RECOMMENDATION: It is staff’s opinion that the variance requested is appropriate for the intended purpose of minimizing loss of life and damage in the unlikely event of a plane crash. Should the Board determine that the five conditions necessary for the granting of the variances exist, and then it is the recommendation of the Secretary that the variance be GRANTED, subject to the following conditions:

1. The site shall be developed as depicted on the approved site plan.
2. The applicant shall obtain all permits necessary to construct the addition.
3. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

RUANE: Is there any additional soundproofing provided for the building and this area?

KNEBEL: I don’t know there are covenants that are required on plats in certain area and I don’t know if this particular property is in that area and has those covenants or not.

J. R. COX: It was old when I was going there. I really doubt that it does.

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RUANE: It was old but was it loud?

COX: Since the planes are about 50 feet off the ground yes, it was loud but enjoyable.

MARKHAM: Is this the only school in the Airport Overlay District?

KNEBEL: Right, this is the only school within the Airport Overlay District.

MARKHAM: Do you know of any schools out west that are near the airport?

KNEBEL: The Airport Overlay District only applies to the McConnell Air Force Base.

USD259, JOE HOOVER, 3850 N. Hydraulic, Wichita, KS 67219: Presently Clark Elementary is a two section school, which means that it has two of each grade in there pre-K through 5, and we don't plan on making it anything but a still a two section school. It would have the capacity to have 300 students. The main purpose for upgrading at this school was equity and that was one of the big issues of the bond issue was to try and get equity everywhere. Air conditioning, multi-purpose room so the kids could have P.E. instead of a double wide portable, have it in a small gym or a multi-purpose room which we use for a cafeteria too. Convert a classroom to an art classroom and one section will be occupational therapy, physical therapy space and another will be a parent involvement storage space so parent volunteers they have a place for their materials as well.

FOSTER MOVES MARKHAM SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN BZA RESOLUTION NO. BZA2003-00044.

Motion carries 5-0-1 (PHILLIPS abstains), and the Board adopts the following resolution:

BZA RESOLUTION NO. 2003-00044

WHEREAS, USD 259 c/o Joe Hoover, (owner/applicant) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to Section III-C.5.f.(4)(d)(3) of the Unified Zoning Code pertaining to the intensity and occupancy of buildings located within the Airport Overlay District on property zoned "SF-5" Single-family Residential and legally described as follows:

Block 15, in Replat of Part of Eastridge, an Addition to Wichita, Kansas, Sedgwick County, Kansas, and part of Block 17 in said Replat of Part of Eastridge described as follows: Beginning at the Northeast corner of said Block 17; thence South 122 feet; thence with an angle of 77 degrees and 40 feet to the right for a distance of 118.7 feet; thence Southwesterly 410.3 feet more or less to a point on the Northerly line of Cottonwood Lane extended, said point being 123 feet to Royal Road; thence Northeasterly and East to the place of beginning, and together with the vacated street described as Royal Road from the Northeasterly line of Cottonwood Lane to the West line of Gouverneur Road, as platted in said Replat of Part of Eastridge, and as vacated in Deed Book 831, Page 205 and in Deed Book 834, Page 347, and on Film 170, Page 114. Generally located at the southwest corner of Gouverneur and Apache Drive.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of August 26, 2003, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the property is developed with an elementary school that is subject to the Airport Overlay District. The subject property is the only school property located with the Airport Overlay District.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as this site has been an elementary school for many years, the size of the addition is small in comparison to the existing school and the overall school site, and the addition is to be setback 80 feet at the closest point from the property line.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the Airport Overlay District will constitute an unnecessary hardship upon the applicant, inasmuch as the addition is being made to enhance the educational experience of the school's students. Student population could increase whether the addition is completed or not.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as the school already exists, the addition is small when compared to the existing improvements, the addition is being constructed to improve the quality of facilities and educational experience of the existing student body and the proposed addition meets all the other requirements of the Airport Overlay District.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Airport Overlay District inasmuch as the addition will not significantly contribute a concentration of large numbers of persons under the runway takeoff and approach paths. The concentration of persons at the school is a pre-existing condition that will not change significantly by the granting of the variance.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance to Section III-C.5.f.(4)(d)(3) of the Unified Zoning Code be granted to permit an expansion of a school building for general occupancy within

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Airport Overlay District III – North on property zoned “SF-5” Single-family Residential and legally described as follows:

Block 15, in Replat of Part of Eastridge, an Addition to Wichita, Kansas, Sedgwick County, Kansas, and part of Block 17 in said Replat of Part of Eastridge described as follows: Beginning at the Northeast corner of said Block 17; thence South 122 feet; thence with an angle of 77 degrees and 40 feet to the right for a distance of 118.7 feet; thence Southwesterly 410.3 feet more or less to a point on the Northerly line of Cottonwood Lane extended, said point being 123 feet to Royal Road; thence Northeasterly and East to the place of beginning, and together with the vacated street described as Royal Road from the Northeasterly line of Cottonwood Lane to the West line of Gouverneur Road, as platted in said Replat of Part of Eastridge, and as vacated in Deed Book 831, Page 205 and in Deed Book 834, Page 347, and on Film 170, Page 114. Generally located at the southwest corner of Gouverneur and Apache Drive.

The variance is hereby GRANTED, subject to the following conditions:

1. The site shall be developed as depicted on the approved site plan.
2. The applicant shall obtain all permits necessary to construct the addition.
3. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 26th DAY of AUGUST 2003.

RUANE: Item #7, Report from MAPD on school district towers is on here at my request. Should we schedule this for a future meeting or treat it as not an action item but as for review and information.

TO: Wichita Board of Zoning Appeals
FROM: Scott Knebel, Senior Planner, Current Plans
SUBJECT: School District Towers

At the May 20, 2003, Board of Zoning Appeals meeting, the Board requested information regarding variances granted for communication towers for Wichita Public Schools. More specifically, the Board inquired about the ability of the towers to handle communication equipment for private sector communication companies and whether or not the Board required the towers to provide for co-location as a condition of approval for the variances. The Board also requested that minutes from several of the variance requests be provided for the Board to review.

The minutes for three variance requests are attached to this memorandum for the Board to review. The cases selected contained the most discussion regarding the school district towers, including the most pertinent discussion regarding co-location. Planning staff reviewed the minutes and determined that the variances do not require the school district communication towers to provide for co-location of private sector communication equipment.

At the time the school district communication towers were constructed, the Unified Zoning Code permitted accessory microwave towers by-right if the tower served exclusively the communication needs of the subject property and did not provide commercial communication services for general or off-site use. The variances granted by the Board were for a setback reduction for the towers, because at the time, towers were required to be set back from low-density residential zoning approximately three feet for every foot of tower height. Since the towers were accessory uses, planning staff recommended a condition of approval that the towers not be used as commercial communication towers, or in other

words, staff recommended that the towers not provide for co-location. Planning staff recommended the condition because the school properties were not appropriately zoned for commercial communication towers, which at the time only were permitted on property zoned "GC" General Commercial or less restrictive. The Board removed staff's recommended condition to prohibit use of the towers for co-location in case the zoning regulations were to change in the future to allow co-location on school sites. The decision proved to be a wise one, as several years later the zoning regulations were changed to allow commercial communication towers in all zoning districts, subject to numerous conditions and zoning approvals. However, the Board did not place a condition of approval on the variances that the towers provide for co-location of commercial communication equipment; instead, the Board removed a recommended condition of approval that the towers not provide for co-location.

Wichita Public Schools has indicated that the school district is currently preparing a detailed report of whether or not the existing towers are structurally sufficient and whether or not the school properties are appropriate for the co-location of communication equipment for private sector communication companies. The report from the school district is not yet completed; therefore, the report is not available at this time for the Board to review. The school district indicated that a copy of the report will be provided to the Board to review upon its completion.

FOSTER: Mr. Hoover, do you have scheduled for next month as well?

HOOVER: Not that I am aware of.

DICKGRAFE: I don't believe Mr. Hoover was here to speak regarding the cell tower issues, and I might note for the Board's information the City Council today had a workshop regarding the master cell phone plan, so I am not sure how much applicability any discussion that this Board may have. The School District as well as cell phone vendors are all involved in trying to re-negotiate the Master Plan so this Board's involvement in the whole Master Plan may change dramatically depending on where the Council goes with the Master Plan.

FOSTER: Do you know how long this process might take?

KNEBEL: Much longer than had I hoped. Last time it took us one year.

FOSTER: The point is well taken. There are inter-relationships between what Sharon is describing and what is here.

DICKGRAFE: I think the Master Plan was developed partially in response to the number of cases that the BZA heard in 2000-2001, and other than the monument tower, I am not sure how many cell phone towers will actually come before the Board given the adoption of that Plan. I know that the Board had questions regarding the cell phone towers and how those worked and most of those were compatibility variances based on the heights of the towers and square footage of the property that the school district was involved.

RUANE moves FOSTER seconds to table Item #7 for discussion until next month.

MOTION carries 6-0.

MARKHAM: Sharon would you make available to us on a need to know basis the facts that come out of the Council meeting that would help us in our discussion.

DICKGRAFE: I can see what I can find out.

RUANE: Item #8, Report from Central Inspection regarding compliance with requirements of various cases.

HERB SHANER, OCI:

Case No. BZA 2002-00047, Westwood Presbyterian Church, pursuant to Section 2.12.590B, Code of the City of Wichita, variances to increase the maximum size of a church sign along an arterial street from 48 square feet to 80 square feet and to permit internal illumination of the sign on property zoned "SF-5" Single-Family Residential, generally located at the southwest corner of Maple and Woodchuck, is in compliance.

Case No. BZA 2002-00046, Leewood Homes, Inc., c/o Joe Lee, pursuant to Section 2.12.590B, Code of the City of Wichita, a variance to allow a multi-tenant sign for an office park in addition to signage for individual businesses, on property zoned "GO" General Office, generally located at the northeast corner of Kellogg and Edgemoor, is in compliance

Case No. BZA 2002-00010, Woodland Lakes Community Church, pursuant to Section 2.12.590B, Code of the City of Wichita, variances on property zoned "SF-5" Single Family Residential to: 1) increase the size of a ground-mounted sign from 48 square feet to 96 square feet and to permit internal illumination of the sign for a church; 2) increase the size of a ground-mounted sign from 25 square feet to 48 square feet and to permit internal illumination of the sign for a day care; and 3) to permit an identification sign for multifamily dwellings, generally located at the northeast corner of Lincoln and Greenwich, is in compliance.

Meeting adjourned at 3:31 p.m.